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CURRENT TOPICS

Report of Committee on Salford Hundred Court

THE committee appointed on 11th September, 1950, under the chairmanship of Mr. G. R. UPJOHN, K.C., to inquire into the practice and procedure of the Court of Record for the Hundred of Salford, have recently published their report, which states that the court in its present form dates from 1st January, 1869, when the Salford Hundred Court and the Manchester Court of Record were amalgamated under the Salford Hundred Court of Record Act, 1868. It is a civil court with jurisdiction in personal actions (except actions for libel, slander, seduction and breach of promise) subject to a limit of £100, and in actions for recovery of land subject to a limit of £50. It is within the power of the Chancellor of the Duchy by order to increase the jurisdiction of the court in ejectment to all cases where the annual rent or value of the lands does not exceed £100. The committee recommend that the Chancellor should forthwith order the increase of the court's jurisdiction in ejectment accordingly. The amount of business transacted by the court for the years 1935-49 inclusive shows no marked falling off compared with that of the Salford County Court, and the two in fact conform quite closely. It is significant that while the business done by the Hundred Court was in the years 1935-39 rather above that of the Salford County Court, from 1939 onwards it has been rather less. The committee think that the increase in the county court jurisdiction to £200 which began on 1st January, 1939, accounts for the change-over in the respective positions of the two courts. The committee are satisfied that the solicitors practising in the court (many of whom have clients who are concerned with the collection of a large number of comparatively small debts) find the court speedy and of service to their clients. This is strongly supported by the Manchester, Salford and District Property Owners' Association. The committee agree and consider that the court is no more costly than the county court and that the court should not be abolished but should be continued. They are of opinion that an increase in the monetary jurisdiction of the court is desirable. They recommend that the monetary jurisdiction of the court be increased to that of the county courts, and that statutory provision should also be made so that the monetary jurisdiction of the court is automatically made co-terminous with the jurisdiction which may from time to time be conferred upon county courts. They further state that there should be a power in the court to transfer the action to a county court at any stage of the proceedings, and that there should be a power in the High Court to transfer actions to the court in the same circumstances in which actions can be transferred to the county court.

Counsel's Minimum Fee

AT an extraordinary general meeting of the Bar, held on 8th October, 1951, in the Middle Temple Hall, it was resolved that the minimum fee for a barrister, which has remained at one guinea since before 1888, should be two guineas except in cases where statute otherwise provides. This resolution will come into force on 1st January, 1952. After that date

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counsel will continue to be entitled only to one guinea in the cases where that fee is allowed in the county courts and under the Legal Aid and Advice Act, 1949, but with those few exceptions the minimum fee will be more in accord with the dignity of the profession.

Valuation of Holdings in Private Companies for Probate Purposes

AT the autumnal meeting on 11th October of the Institute of Chartered Accountants, Mr. T. A. HAMILTON BAYNES, M.A., F.C.A., speaking on the valuing of shares in private companies for estate duty purposes, said that the fact that so few cases had been taken to the courts in the fifty-seven years during which estate duty had been in force was a tribute to accountants and to the Estate Duty Office. For duty purposes, the value was the amount which, in the opinion of the Commissioners of Inland Revenue, the shares would fetch in the open market at the date of the deceased's death, so the accountant who undertook the valuation was faced with two unknowns: the commissioners' opinion and the hypothetical purchaser, although he might know more about the company than either of them. He understood that the Office invariably consulted the Actuaries' Investment Index or some similar publication to see how public companies in the same industry were faring, though this was not a very reliable guide since stock exchange prices did not represent a valuation of assets and earning potential. Then, he said, the accounts were examined and the greater the holding the greater the importance of the assets as against the earnings. Restrictions in the articles on transfers were ignored—except to the extent that they would influence the hypothetical purchaser on the assumption that they would apply to him after he acquired the shares. The opportunity of buying other members' shares at favourable prices were also ignored in valuing a particular holding. If the deceased had been a director, it was perfectly proper to argue that his death had reduced the value of his shares—the strength of a company was not in its assets but in its directors. However, the Revenue could rightly ask to see accounts for the period after the death, to see if the expected fall in profit had, in fact, taken place. The dividend record was a better indication of the shares' value than the earnings record, unless the dividends had no relation to the profits, as in the case of a family business where profit is distributed as remuneration. Where there were no profits or dividends, asset values were relevant, but were subject to a heavy discount, particularly for a minority holding, owing to the difficulty of bringing about a winding up. He emphasised that a share valuation for probate purposes should not be left in the hands of the secretary or the solicitor, but should be entrusted to an accountant with the necessary knowledge and experience.

Purposes other than Probate

AT the same meeting an interesting paper was read by Mr. W. G. CAMPBELL on the valuation of holdings in private limited companies for purposes other than probate. He stated that the basic principle was the determination of a fair price for the shares as between a willing buyer and a willing seller, the business being regarded as a going concern. The memorandum and articles must be closely examined to see the precise rights of the shares—and of the directors. Then the assets must be examined and marshalled into three groups: tangible business assets, investments and intangible assets which go to make up goodwill. He outlined the steps necessary to adjust past profits as a basis for estimating future profits, particularly in relation to management costs, which tend to be above normal in private companies, transactions not at arm's length and taxation. The deduction for profits tax depended so much on appropriation of the profit, he said, as to merit inclusion as an appropriation itself. Of course, past profits were a matter of history; proper stress should be laid on current trends and foreseeable changes. On the subject of risk he said that the yield of gilt-edged stocks could be taken as appropriate yield where there was relatively no risk, and some addition had to be made to this percentage to cover the risks inseparable from business, particularly when carried on by a private company. In his opinion, an increased earnings yield of 5 per cent. would be the least expected from the equity shares of a good private company as compared with shares of a similar class in a public company. Capitalising the net maintainable earnings in accordance with the appropriate earnings would produce an amount representing the total value of the business assets, which then required to be divided by the number of shares.

The Magistrates' Association

THE thirty-first annual report of the Magistrates' Association states that during the last year nearly a third of the magistrates in the country have been given an opportunity to attend one or other of the thirty-one conferences arranged by the Magistrates' Association. In addition there were two successful week-end meetings, one at Harrogate for justices in England and Wales and one at Dunblane for Scottish justices and others connected with the work of the courts. One result of these activities has been that there has been a gross increase in membership of the association of 1,572 and, after taking into account deaths, retirements and resignations, a net increase of 1,033. With regard to LORD OAKSEY'S proposal that the principle of the suspended sentence was worthy of consideration, the council of the association showed itself by an overwhelming majority to be in principle against such a type of sentence. Other matters which have engaged the attention of the association are the need to allow a longer time to elapse before a motorist can get a clean licence after an endorsement and the need to amend the law to provide for proof of previous convictions in the absence of the defendant. The association is also of the opinion that fines should be reviewed by Parliament in view of the inadequacy of the upper limit of those inflicted under old statutes when the value of money was considerably greater than it is to-day.

Indian Income Tax

IN an announcement dated 16th October, the Commonwealth Relations Office state that owing to recent changes in Indian legislation everyone in the United Kingdom who draws income from India, and who is due to pay Indian income tax this year, will from now on have to pay tax on the whole of that income at the rate of at least 8s. in the £, unless he makes a declaration in writing, to reach his Indian Income Tax Officer before 31st October, 1951, that he wishes his Indian tax to be assessed " by reference to his total world income," in which case he will be assessed on a sliding scale according to the size of his income from all sources. At present rates, everyone will find it worth his while to make such a declaration unless his income from all sources is well over £5,000 a year. There is one important condition: the declaration will be binding for all future years. All pensioners of the Government of India have been told about this legislation and advised what to do. If time permits, persons drawing income from India can obtain further particulars from the Chief Accounting Officer, Office of the High Commissioner for India, 55 Jermyn Street, London, W.1, but declarations, to be effective, must reach India by 31st October.

MONEYLENDERS: DUTY TO "CARRY ON" BUSINESS AT AUTHORISED ADDRESS

It is remarkable how easy it is for a licensed moneylender, although acting with every good intention, to contravene some provision of the Moneylenders Acts, 1900 to 1927. For example, a moneylender may fail to carry on business at his authorised address although he has acted with absolute propriety in other ways. The duty imposed on a moneylender to carry on business at his authorised address is to be found in s. 1 (3) (*b*) of the Moneylenders Act, 1927, and is comparable with the duty previously imposed on a moneylender to carry on business at his "registered" address by s. 2 (1) (*b*) of the Moneylenders Act, 1900. The well-known leading authority on this subject is that of the House of Lords in *Kirkwood* v. *Gadd* [1910] A.C. 422, where Lord Loreburn, L.C., stated that if a moneylender really deals with a borrower from the registered (now authorised) address, whether by interview or correspondence, he may, without infringing the Act, transact negotiations or conclude the contract elsewhere; it is always a question of fact, the answer to which depends upon the circumstances of the case.

In this connection it is now important to remember s. 5 (3) (*b*) of the Moneylenders Act, 1927, which provides in effect that a moneylender must not employ an agent or canvasser for the purpose of inviting any person to borrow money or to enter into any transaction involving the borrowing of money, and that a transaction brought about by a contravention of those provisions shall be illegal unless the moneylender proves that the contravention occurred without his consent or connivance. In view of this prohibition against a moneylender employing agents and canvassers to invite people to borrow money, it is likely that certain old decisions given under s. 2 (1) (*b*) of the Moneylenders Act, 1900, will have to be regarded in a different light, though, were it not for that prohibition, those old decisions and the grounds for them might otherwise be unobjectionable. Thus, in *Staffordshire Financial Co.* v. *Hunt* [1907] W.N. 258, the decision rested upon the ground that the moneylenders had carried on business at an address other than their registered address, but now under the Act of 1927 there would be another fatal obstacle to the moneylenders' claim in that the borrower in this case was introduced to the moneylenders by a man who made a business of introducing prospective borrowers to moneylenders and had done so with the knowledge and consent of the plaintiffs in this action. In *King* v. *Turnbull* (1908), 24 T.L.R. 434, the fact that the lender and borrower were introduced by a man who received a commission for so doing from the lender would, itself, vitiate the transaction under the Act of 1927. Likewise in *Blair* v. *Buckworth* (1908), 24 T.L.R. 474, the borrower, who desired to raise money upon the security of certain of his estates, was "put into communication" with the lender by a solicitor. There was not the slightest suggestion of impropriety on the part of the solicitor. That case was eventually decided by the Court of Appeal on the question of excessive interest, but now under the Act of 1927 the operations of the intermediary in putting the borrower into communication with the lender would be scrutinised with a result probably fatal to the moneylender's claim. Before leaving this point we must repeat that the Act of 1927 does not prohibit canvassing or touting for the purpose of inviting people to borrow money where the agent or canvasser acts without the authority or mandate of the moneylender to whom he is introducing a customer. Thus, in *Verner-Jeffreys* v. *Pinto* [1929] 1 Ch. 401, the plaintiff invited one, H, to introduce her to a moneylender, whereupon she was introduced by H to the defendant, from whom she borrowed money. There was no evidence that the defendant ever employed or adopted H as his agent, and it was held by a majority of the Court of Appeal that the transaction did not contravene the provisions of s. 5 (3) of the Act of 1927.

Let us now apply ourselves to the main question, namely, when does a moneylender really deal with a borrower from the authorised (formerly registered) address? There is the simple case which leaves no room for doubt, as where the application for the loan, the arrangement of the terms, and the promissory note for the amount of the loan are all made and executed at the moneylender's authorised address (see *Jackson* v. *Price* [1910] 1 K.B. 143), and in those circumstances it is quite immaterial that the amount of the loan is sent by cheque through the post to the borrower at his address (*Jackson* v. *Price*, *supra*). Again, it is quite in order if the advance is actually made, not at the moneylender's authorised address, but at the borrower's office or other address, provided that the borrower has previously written to the moneylender about the loan at the latter's authorised address. Thus, in *King* v. *Massey* (1908), 24 T.L.R. 710, the lender called upon the borrower at the latter's place of business with reference to the proposed loan, but no arrangement was come to, and the borrower then called upon the lender at his registered office, but did not see him. The borrower then wrote a letter to the lender at his registered office about a loan of £100 or £200, and in reply thereto the lender called upon the borrower at the latter's office, where the details of the loan were arranged and the money actually advanced. It was held that the business was carried on at the lender's registered address, notwithstanding that it was completed at the borrower's office. Likewise the transactions were held valid in the county court case of *Barnard* v. *Roe* (1914), 49 L.J. News 313, where the borrower went to the moneylender's registered address and negotiated for a loan of £50 and subsequently the promissory note was signed and the money handed over at the borrower's house, and in *Rueter* v. *Bradford Advance Co.* (1910), 26 T.L.R. 533, where the negotiations for the loan and substantially the whole transaction took place at the moneylender's registered address, but the bill of sale by way of security for the loan was executed at the office of the lender's solicitor and the amount of the loan handed over there. Similarly in *Solomon* v. *MacNamee* [1915] (O.H.) 1 S.L.T. 38, where the loan was arranged at the moneylender's registered address, but the borrower signed the promissory note at his own address, the transaction was held valid.

As to conducting a transaction entirely by correspondence, the position appears to be that where the borrower knows of the lender's authorised address and receives correspondence from the lender issuing from the latter's authorised address *before* the transaction is completed, then no objection can lie. Thus, in *Re a Debtor* (*No. 2*); *ex parte The Petitioning Creditor*, otherwise *Re Seed*; *ex parte King* [1910] 1 K.B. 661, the whole transaction was commenced by a circular sent from the registered address of the moneylender to the private address of the borrower, and was entirely carried out by correspondence between the two addresses. It was held that the moneylender had carried on business at his registered address. For a case where the initial step only was taken by correspondence we may refer to *Bowen* (*H.*) *& Co.* v. *Samuels* (1918), 34 T.L.R. 487, where the lenders wrote from their registered address to the borrower for an interview at his (the borrower's) office

with a view to lending him money. The interview took place later at the borrower's office where the lenders gave the borrower a cheque for £200 in exchange for a promissory note for £300. It was held by the Court of Appeal, affirming Darling, J., that as the borrower knew of the lender's registered address before the transaction was effected there was no violation of the Act of 1900. The two foregoing cases would to-day require to be considered in the light of s. 5 (1) of the Moneylenders Act, 1927, which provides that no person (i.e., a moneylender or anyone else) shall knowingly send or deliver to any person except in response to his written request any circular or other document containing an invitation to borrow money from a moneylender.

The proposition to be deduced from the foregoing cases is that, if the transaction has been substantially effected at the authorised address of the moneylender, the fact that some *subsidiary* acts have been done elsewhere does not amount to a contravention of the statute (see the *dictum* of Lord Finlay, L.C., in *Cornelius* v. *Phillips* [1918] A.C. 199, at p. 204). This may be illustrated by the earlier case of *Wells* v. *Kerr* (1913), 47 Ir. L.T. 66, where the transaction was not vitiated because the borrower's wife signed the promissory note as surety elsewhere than at the registered address of the moneylender, and by the recent case of *Grosvenor Guarantee Trust, Ltd.* v. *Colleano and Another* (1950), 94 Sol. J. 706, where the material facts were as follows: the defendants Colleano and Geiger went to the authorised address of the plaintiffs (the moneylenders) and there saw the plaintiffs' secretary. The plaintiffs then made a loan to the defendants of £700 at a rate of interest of 150 per cent. per annum on the security of a promissory note signed jointly and severally by the two defendants. Later the defendant Geiger approached the plaintiffs' secretary for a further loan and the plaintiffs made a loan of £350 at a similar rate of interest to both defendants on the security of a promissory note signed jointly and severally by the two defendants. The formalities of the loan of £350 were completed at the defendant Geiger's private address. The two defendants throughout both transactions had acted very closely together and it was clear that the defendant Colleano had trusted the defendant Geiger implicitly and had concurred in the making of the said loan of £350. However, the defendant Colleano contended that so far as he was concerned the loan of £350 was irrecoverable on the ground that the transaction had not taken place at the authorised address of the moneylenders. Morris, J., rejected that contention, holding that the completion of the loan of £350 at the private address of the defendant Geiger was only a subsidiary act and that the plaintiffs in making that loan had carried on business at their authorised address.

As to the repayment of loans, this may be done anywhere without infringing the statute, as the receiving of money in repayment of loans is not part of "the business of a moneylender" within the meaning of s. 2 (1) (*b*) of the Moneylenders Act, 1900 (now s. 1 (3) (*b*) of the Moneylenders Act, 1927) (see *Hopkins* v. *Hills* [1910] 2 K.B. 29).

From an examination of the above cases it is clear that the duty of a moneylender to "carry on" business at his authorised address involves some degree of care, but does not really impose any very heavy burden on him. Nevertheless, it is easy for a moneylender to overlook the essential steps required to bring the borrower into communication with him at his authorised address. As a flagrant example of contravention of the statute we may refer to *Cornelius* v. *Phillips* (1918), 34 T.L.R. 116, where the moneylender's registered address was in Liverpool, and the borrower was introduced to the lender at a hotel in Formby and there borrowed a sum of money from the lender. The whole of the transaction in every one of its stages between the moneylender and the borrower was carried out at the hotel. It was held by the House of Lords that the transaction was void as contravening s. 2 (1) (*b*) of the Act of 1900. But a much more subtle mistake was made by the moneylender in the Irish case of *Re Scott and a Debtor's Summons* (1930), 64 Ir. L.T. 57, the decision in which is entirely in line with English and Scottish cases. A man named Finucane in the employment of moneylenders negotiated a loan to one Kennedy in a public-house kept by the latter. It was arranged in the public-house that Finucane's employers would advance £100 to Kennedy provided that Kennedy would induce a man named Scott to join with him in signing a joint and several promissory note for £140. Scott carried on the business of a bookmaker at an office near Kennedy's public-house, and, at Kennedy's request, Scott agreed to sign the promissory note. This was subsequently done, the promissory note being signed by both parties in Kennedy's public-house. After the promissory note was signed, Finucane took it back to his principal's office and later Kennedy called at that office, where the moneylenders handed him £100 in cash. Kennedy paid three instalments, but when he failed to pay a further instalment the moneylenders took proceedings, not against Kennedy but against Scott, who, of course, had become a principal upon the note by signing it as a joint and several note. The proceedings taken against Scott were in bankruptcy, and it was held by the Supreme Court (Kennedy, C.J., Fitzgibbon and Murnaghan, JJ.), affirming the decision of Johnston, J., that the business in this case was not carried on at the registered address of the moneylenders and that therefore the debtor, Scott, was not indebted to the creditors, i.e., the moneylenders, on foot of the promissory note in question. As the court pointed out, Scott's actual contact with the business was a short and hurried visit to the public-house for the purpose of obliging his neighbour, Kennedy, by signing the promissory note. Scott never at any time visited the office of the moneylenders or spoke to their manager or corresponded with them, and no money ever passed from the moneylenders to Scott. Therefore so far as Scott was concerned nothing whatever occurred at the registered office of the moneylenders. However, the Supreme Court indicated that as against Kennedy the receipt of the money by him in the registered office of the moneylenders might make the transaction good against Kennedy, but as Kennedy was not sued it was not necessary to decide that point.

The line of cases to which we have referred establishes the following propositions:—

(1) The question whether a moneylender is carrying on business at an address other than his authorised address is one of fact to be decided upon all the circumstances of the case.

(2) In respect of a particular transaction, a business may be carried on at the authorised address although a particular piece of business connected with that transaction is carried out at another address.

(3) In every case the borrower must be brought into communication with the lender at the latter's authorised address *before* the completion of the transaction.

(4) It is not sufficient that the borrower should merely *know* the name and authorised address of the moneylender without there being any facts to support that knowledge. In other words, the borrower must be brought into communication with the lender's authorised address either by the borrower's attendance at the authorised address, or, where the transaction is effected by correspondence, by means of correspondence issuing from the lender's authorised address

and showing clearly on the face of the correspondence the authorised name and address of the moneylender.

(5) Remembering that a surety is a "borrower" for this purpose within the meaning of that word in the Moneylenders Acts, 1900 to 1927, if it is desired to sue the surety if required—and, indeed, there would be no other object in having a surety—then the foregoing propositions are equally applicable in the case of a surety. M.

A REVIEW OF RECENT DEATH DUTY DECISIONS—I

AN exceptionally large number of estate duty cases have been reported in recent months. One group of these relates to the ultimate incidence of duty, another group to some rather difficult points on annuities and insurance policies, while the important case of *St. Aubyn* v. *A.-G. (No. 2)*, in the House of Lords, not only elucidates some of the "controlled company" sections in the Finance Act, 1940, but also settles the law on the question of the reservation of a benefit on a gift.

The ultimate incidence of duty

Re Lander [1951] 1 All E.R. 622 turned on the rule that real property, or a share in real property, must bear its own proportion of the estate duty. Under the testator's will, his nephew was given an option to purchase the freeholds for £14,000, and in due course they were conveyed to him for that sum. The estate duty valuation, however, was a considerably higher figure, and Roxburgh, J., held that the nephew must bear the duty on the excess value. *Re Jolley* (1901), 17 T.L.R. 244, where option holders were treated as devisees and held liable for the entire duty, was not followed.

Re Dowse [1951] 1 All E.R. 558, which has an indirect connection with current estate duty practice, was also concerned with the effect of an option. The option in this case was to purchase a house at "the value placed upon the same . . . for estate duty purposes," and the difficulty arose from the fact the value agreed was a low one arrived at under the terms of the Chancellor's concession, disregarding the "vacant possession" element. Vaisey, J., held that the option could be exercised at the concession value, subject to security being given for any increase which might be made in the valuation by the Estate Duty Office.

Re Cunliffe-Owen [1951] 2 All E.R. 220 was concerned with the incidence of duty on legacies from an estate which included assets in Canada and South Africa. In the first place Wynn Parry, J., held that a direction to pay "death duties" out of the residue did not cover foreign duties in the absence of something in the context which would compel a wide construction. The question then arose of how the beneficiaries (who would have to bear the foreign duties) were to share the reliefs allowed for assets situated in Canada and South Africa under the Double Taxation Conventions. It was held that the legacies must be deemed to be paid out of the Canadian and South African assets in the proportion borne by the value of these assets to the value of the whole estate and that the legatees were entitled to a corresponding proportion of the allowances. As to the residuary beneficiaries—who were *not* all liable to the foreign duties at the same rate—the allowances were to be apportioned between them in accordance with the value of their shares, not the amount of foreign duty paid.

Solicitors drafting wills where foreign property is involved should be careful to include express directions on the subject of foreign duty so as to avoid difficulties of this sort.

British securities held by foreigners: exemption

As events have turned out, *Re Smith's Settlement Trusts* [1951] 1 All E.R. 146 is of no more than transitory importance. The background and effects of this decision, and the legislative steps taken to meet the situation it created, have already been discussed in these columns (*ante*, p. 586), and for present purposes it is only necessary to recall that certain British securities issued under the Finance (No. 2) Acts of 1915 and 1931 are exempt from British taxation so long as they are in the beneficial ownership of persons "neither domiciled nor ordinarily resident in the United Kingdom." In *Re Smith*, securities of this kind passed on the death of a life-tenant (domiciled and resident here) to reversioners domiciled and resident in Australia. Danckwerts, J., held that the statutory test was satisfied by the persons *to* whom the property passed and that this was sufficient to sustain the exemption. However, the decision is in effect reversed by the Finance Act, 1951, s. 34, and now only applies, by the proviso to s. 34 (2), where death occurred before 14th December, 1951, and no part of the duty had been paid before that date. In all other cases the statutory test must be satisfied by the person who owned the securities *before* the relevant death.

Legacy duty: when still leviable

In *Re Gibbs* [1951] 2 All E.R. 63 it was argued that legacy duty was not attracted on a residue which was not ascertained until after the Finance Act, 1949, though the testator's death occurred before the Act was passed. Danckwerts, J., held otherwise, and thus confirms the law as stated in the 7th edition of Woolley's Death Duties, at pp. 173-174:—

> "liability is not affected by the fact that a residue had not yet been ascertained by [30th July, 1949] or that a legacy had not been paid to the legatee or retained on his behalf, provided that all other conditions of liability were fulfilled: s. 27 (3)."

Re Gibbs also decides that, where legacy duty was attracted on an annuity before the Act of 1949, duty being payable by four annual instalments, the instalments falling due after 30th July, 1949, are not remitted by the Act.

Pensions and annuities

In recent years it has become common practice for large firms to arrange pension schemes for their employees, backed usually by insurance policies, and the terms of the scheme usually provide that the employee may elect, before retirement, to surrender part of his prospective pension in exchange for a smaller pension which will continue after his death for the benefit of his wife or family. *Re Payton* [1951] 2 All E.R. 425 concerned a scheme of this kind set up by the Austin Motor Co. The terms of the scheme did not provide in so many words for two distinct pensions, one following the other; the position was that the insurers covenanted with the employers to pay the stipulated pensions direct to the beneficiaries in succession, while the employers were trustees of the policy for the benefit of the persons concerned.

The Court of Appeal held (distinguishing *Re Duke of Norfolk's Will Trusts* [1950] 1 All E.R. 664) that this was not a case where a single annuity "passed" on death from one person to another, but that husband and widow enjoyed distinct equitable rights in succession. Though the widow's pension still attracted duty, as a "benefit provided" under s. 2 (1) (*d*), the important result followed that it was exempt from aggregation with the husband's estate (a matter of some consequence here, as the estate was worth a million or so).

Re Beit [1951] 2 T.L.R. 124 tested and confirmed the view which has often been expressed (notably by Mr. H. A. Woolley) that no liability to duty arises on the cesser of an annuity under a will if there was no annuity fund and the annuitant deliberately agreed to accept the personal covenant of the residuary beneficiaries in lieu of security. It is clear, of course, that where the annuitant has relinquished any right to be paid out of the residue or a special annuity fund, there is no "interest ceasing" on his death so as to attract duty under s. 2 (1) (*b*). The risk in such cases would be that the abandonment of the security might amount to the premature determination of a limited interest within s. 43 of the Finance Act, 1940; but Vaisey, J., has held that this is not so, since the annuity itself continues.

Insurance policies

Money arising under insurance policies may attract duty under several different heads, so that, when the Estate Duty Office claim fails under one head, they may be able to attack from another angle. *Re Brassey's Deed Trusts* [1951] 2 All E.R. 353 draws attention to a very serious liability which may arise, independently of the amount of the policy moneys. Under the terms of a settlement, it was the duty of the trustees to pay the premiums on certain policies out of the trust income. On the death of the life assured, the Estate Duty Office claimed duty under s. 2 (1) (*b*) on the "slice" of trust capital required to produce the premiums, on the basis that there was an "interest ceasing" when payment of the premiums stopped. The duty claimed on this footing amounted to more than the capital value of the policies; nevertheless, the Court of Appeal was reluctantly compelled to allow the claim, on the ground that the ultimate beneficiaries had the right to compel payment of the premiums, and thus had an "interest." This reasoning depends intrinsically on the fact that the trustees were *obliged* to pay the premiums, and to pay them out of income; it seems, therefore, that a charge under s. 2 (1) (*b*) can be avoided by giving the trustees power to pay the premiums (and out of either capital or income), without compelling them to keep up the payments.

Re d'Avigdor-Goldsmid [1951] 2 All E.R. 543 is a much more difficult case—indeed, the reserved judgment of the Master of the Rolls occupies nearly twenty pages of close reasoning—but the result is quite simple. The facts were as follows:—

(i) The deceased took out a policy on his own life in 1904.

(ii) In 1907, by a pre-nuptial marriage settlement, he settled the policy with other funds upon trusts under which the sons of the marriage were potential beneficiaries.

(iii) In 1930 there was a resettlement under which the deceased and his eldest son were given a joint power of appointment.

(iv) Until 1934 the deceased, in pursuance of covenants in the settlements, paid all premiums on the policy.

(v) In 1934 the policy was appointed to the eldest son absolutely, and thereafter the son paid all further premiums (but it should be noted that he had other funds derived from his father which were available to pay some proportion of the premiums).

(vi) In 1940 the father died, and the Estate Duty Office claimed duty on the policy money on the ground that—

(*a*) the policy was "kept up . . . for the benefit of a donee," so that duty was attracted in proportion to the premiums paid by the deceased (Finance Act, 1894, s. 2 (1) (*c*), applying Customs and Inland Revenue Act, 1889, s. 11 (1)); or

(*b*) in the alternative, the policy money was an "interest purchased or provided by the deceased" (Act of 1894, s. 2 (1) (*d*)); or at all events must be deemed to be "provided" by the deceased, since the son had available funds derived from him (Finance Act, 1939, s. 30 (1)).

The Court of Appeal held that, *prima facie*, a potential beneficiary under a settlement who later attains an absolute interest is a "donee" from the date of the settlement; but that the term "donee" does not include a beneficiary within the marriage consideration where a settlement is made in consideration of marriage. On this latter ground, the claim under the first head was rejected.

The claim under s. 2 (1) (*d*) was more difficult. It was not seriously contested that the policy moneys were an interest, or that they were "provided" by the deceased to the extent that the son had available funds derived from him to pay the premiums after 1934. The son contended, however, that no "beneficial interest accrued or arose . . . *on the death of the deceased*" within s. 2 (1) (*d*), since the absolute interest vested in the son *at the date of the appointment* in 1934. This argument was supported by the Scottish decision in *Lord Advocate* v. *Hamilton's Trustees* [1942] S.C. 426. However, the Court of Appeal refused to follow this decision, and held that when the money became due on the death an interest thereby "accrued" to the beneficiary, i.e., the bare policy became converted into an immediate right to a money payment. The claim under s. 2 (1) (*d*) therefore succeeded; and the result is that there is now a sharp divergence between the English and the Scots law, which can be resolved only by the House of Lords.

At the date of the death in this case, it should be noted, s. 76 of the Finance Act, 1948, had not been passed. This section brings policy moneys within the charge under s. 11 of the Act of 1889 where the premiums have been paid by trustees under a settlement made by the deceased; but it would have made no difference to the present case, where the premiums under the settlement were paid by the deceased himself; moreover, the interpretation of a "donee" so as to exclude a beneficiary within the marriage consideration applies with equal force to the extended charge under s. 76.

A less recent case which must be noticed briefly in connection with claims under s. 2 (1) (*c*) and s. 11 of the Act of 1889 is *Re Oakes* [1950] 2 All E.R. 851, where the deceased took out a policy for the benefit of his wife, or of himself in case she predeceased him. Romer, J., held that the policy was "effected" by the deceased, though the father-in-law contributed the first two premiums; and that the deceased "kept up" the policy by paying subsequent premiums, including a final payment in composition of future premiums.

In conclusion, attention is drawn to the Scottish case of *Sharpe's Trustees* v. *Lord Advocate*, decided by the Inner House of the Court of Session on 28th March this year and reported briefly in 101 *Law Journal* 373. Here policies had been executed by the deceased in favour of his wife, "whom failing," his own "executor or assignees whomsoever." The court held that the effect was to create an interest in favour of the deceased, with the result that the policy moneys were not exempt from aggregation.

This lengthy review shows how many obscure points have come before the courts recently. There remains, besides, the *St. Aubyn* (*No. 2*) case, a decision of outstanding importance, which must be reserved for exhaustive examination in a subsequent article.

J. H. M.

Procedure

X—PREPARATION FOR TRIAL

A VERY good narrative account of the course of an ordinary action at law is provided by the items in the bill of costs carried in for taxation by the successful party. In that bill the most substantial, though also often the most airily expressed, item is that which begins "Instructions for brief" and proceeds, by an impressive enumeration of the steps which the solicitor has taken to put counsel in a position to make the best of his client's case, to its inevitable end with the words "and preparing for trial generally." It is our unblushing purpose here to go over a number of points which every practitioner in litigation ought to know relating to the vital stage in the conduct of an action represented in the bill by this brief item and perhaps one or two neighbouring items.

According to the better practice, we are not strictly accurate in describing preparation for trial as a "stage" in the action. The marshalling of evidence, the consideration of documents and the general laying of sound foundations for the presentation of a case should occupy the solicitor as occasion offers or necessity requires from the initial receipt of instructions until the time when the brief is delivered. But, although it is a mistake to leave everything to the last, it is not until the pleadings are closed, discovery obtained and counsel's advice on evidence received that the various matters requiring the solicitor's attention can be brought to a state of reasonable finality, taking shape in a carefully drawn brief and in the numerous precautionary and other measures necessary to ensure the presence of an unruffled client and his witnesses at the correct time and place. Not the least of the tribulations of the solicitor and his staff at this period will be the watching of the list and maintaining contact with witnesses, who are apt to develop itinerant habits shortly before the trial. Last-minute compromises are often suggested, and if anything results by way of an effective settlement the solicitor must not omit to inform the Associate's Department which has charge of the lists, or the Cause Clerk in a Chancery matter.

Everyone must, of course, settle his own routine for achieving the essential object of a well-got-up case. There is little direct assistance to be derived at this stage from the Rules of Court. Let our final exhortation of perfection before coming to a few specific reminders be that the surest foundation of successful litigation is care in taking instructions and thoroughness in following up every suggestion which appears to be material in the facts as elicited. All witnesses, and particularly the party himself, ought to be cross-examined on their statements while their proofs are being taken, so far as this may be done with tact. And if the resultant proofs, drawn with a due appreciation of the law of evidence, clearly expressed in short sentences, and telling the witness's story in chronological order, can be taken early, before memories fade too much, and sent to counsel with the instructions to advise on evidence, counsel's advice thereon will be more specific and valuable than it might otherwise be. There is, by the way, nothing improper in furnishing a witness with a copy of his proof, and a great deal to recommend this step.

Not all witnesses are volunteers. Subpœnas may be required. Some witnesses may be abroad, in prison, or too ill, aged or infirm to attend the trial. It is as well to know how to deal with these by no means unusual cases. If an adjournment or postponement of the trial cannot be obtained or is undesirable, a commission to take evidence or the issue of letters of request will be appropriate. A subpœna, being in form a writ, will not run abroad, unless you call Scotland or Northern Ireland abroad; for those parts of the United Kingdom a subpœna may issue on the special leave of a judge (Judicature Act, 1925, s. 49). Letters of request are tricky, and it is necessary to study the requirements applicable in the particular country. These are indicated in the notes to Ord. 37 in the *Annual Practice*. Prisoners may be brought to court as witnesses by application to a judge in chambers under s. 9 of the Criminal Procedure Act, 1853, or to the Home Secretary under s. 11 of the Prisons Act, 1898.

A subpœna, once issued, remains in force until the trial of the action, but it must be served within twelve weeks (Ord. 37, rr. 34, 34A). The date inserted in the command for the attendance of the witness is usually, if time allows, the first day of the next legal sittings or the commission day of the appropriate assizes. If circumstances (such as delay in service) require, the return day may be amended without leave, and the subpœna resealed. Personal service must be effected a reasonable time before the witness is wanted. Most printed forms of subpœna announce in a footnote that notice will be given to the witness of the actual day on which his attendance is required. It is a good practice to underline this footnote in red ink on the copy which is served; that copy need not, incidentally, disclose the names of any other witnesses included in the subpœna. Errors in witnesses' names may be corrected (r. 31), but a party ruins the efficacy of his subpœna if he substitutes the name of a fresh witness for one named in the appropriate space (*Barber* v. *Wood* (1838), 2 Moo. & R. 172). Nevertheless a subpœna may issue in blank, leaving the name or names to be filled in before service, a facility especially useful when a "representative" witness has to be called to testify from a record or to produce some official or semi-official document. *Eccles & Co.* v. *Louisville & Nashville Railroad Co.* [1912] 1 K.B. 135 warns us to consider precisely in whose custody a document may be and whether that person, if a servant or employee, has his master's authority to comply with the order for production.

Among the documents required for the trial of an action the agreed bundle of correspondence is commonly of great importance. When the solicitors on both sides meet for the purpose of checking their copies of this bundle, they can profitably give attention to a number of matters besides seeing that the paging is uniform in all copies. Addresses and signatures may need to be supplied in those pages which have been reproduced from incomplete file copies, and any typing errors carefully corrected. The copy correspondence for the use of the court should be free from underlinings and other marks such as some people delight to use in embellishment of the typewritten word.

But perhaps a greater temptation affecting parties and witnesses alike is to mark plans and photographs in accident cases and similar disputes with controversial matter. In the absence of agreement a plan should show only permanent features actually surveyed by the draftsman: to put to a witness a plan purporting to indicate the exact place of a collision, for instance, is tantamount to asking him a leading question of a peculiarly inescapable kind, while to provide such a document for the court would be to press upon it inadmissible evidence.

The existence and location of all relevant documents will have been established by discovery. There now fall to be served notices to produce and admit. It is as well to have in mind the purpose and effect of these notices. The notice to produce is directed to enabling a party to prove documents which are in the possession of his opponent; the notice to admit is to render it as far as possible unnecessary to prove

strictly the party's own documents. The effect of the latter notice is prescribed by Ord. 32, r. 2, as amended. Provided the notice is served within the time there laid down and no counter-notice requiring strict proof is received, the documents to which it relates are deemed admitted unless it is otherwise ordered. Sub-rules (3) and (4) contain provisions with regard to costs designed to encourage the giving of notice to admit and to discourage unreasonable counter-notices.

A notice to produce is naturally not the equivalent of a subpœna *duces tecum*; the party to whom it is given need not comply. If he does not, then the effect is that the party giving notice (in reasonable time) may adduce secondary evidence of the contents of any document not produced, provided always that the original document is shown to be in the possession or control of the party given notice (*Sharpe* v. *Lamb* (1840), 11 Q.B. (A. & E.) 805).

The notices to produce and admit should thus between them cover all documents on which one's client intends to rely and which are in the possession of either party. If a stranger to the action has the document, a subpœna *duces tecum* should be issued. The importance of these notices is illustrated by the fact that Odgers suggests sending drafts of them to counsel when advice on evidence is sought (Pleading and Practice, 13th ed., p. 243).

Order 32 also deals with a form of admission more rarely met with—an admission of facts. We adverted at p. 589, *ante*, to an admission made by a party on his own initiative (r. 1) leading to a form of judgment without trial (r. 6). That is purely a costs-saving procedure. The purpose of a notice under r. 4, however, is to procure, for use in lieu of evidence, *the other party's* admission of a specific fact or facts. There is a costs sanction on unreasonable refusal to admit.

Readers of experience will perhaps bear with us if we offer a few general remarks on drawing the brief. We would not be so presumptuous as to suggest any hard-and-fast formula for someone else's literary efforts. Much must depend, not only on the good sense and taste of the draftsman, but also on the particular exigencies of the matter in hand. However, the time-honoured division of the layout into "Facts," "Observations" and "Proofs" appears worth preserving. There is no advantage in repeating under "Facts" what is in the witnesses' proofs; this section should summarise clearly the relevant facts from the point of view of the case to be presented. The "Observations" may in many cases advantageously be arranged in the order of treatment adopted by counsel when advising on evidence. Bold sub-headings or sidenotes liberally used will catch counsel's eye if he needs to refer to the brief when on his feet in court. Nor do we think that the solicitor should be shy of a succinct reference to matters of law in the course of his observations. He should certainly not neglect to provide the advocate with any suitable material for the cross-examination of the opposing witnesses.

J. F. J.

A Conveyancer's Diary

"SIGNED BY THE PARTY TO BE CHARGED"

THE decision in *Leeman* v. *Stocks* [1951] 1 All E.R. 1043 has not been reported as widely as one would expect, since the result of the case was such as at first glance would hardly fail to surprise, and the circumstances out of which it arose are not uncommon. V instructed an auctioneer to sell certain premises for him. Before the sale the auctioneer filled in a printed form of contract of sale by inserting the date for completion and the name of V as that of the vendor. The premises were knocked down to P, and the auctioneer then completed the form of contract (so far as it could ever be said to have been completed) by inserting P's name and address, a description of the premises and the price which P had bid, and by obtaining P's signature to the document.

P sued V for specific performance of the contract, and V objected that the document had not been signed either by him or by his agent, the auctioneer, and that it did not therefore constitute a sufficient memorandum of the contract for the purposes of s. 40 (1) of the Law of Property Act, 1925. This objection was overruled, and judgment given for P for specific performance.

The case for V fell into two distinct parts, and the first question which was dealt with was this. The evidence of the auctioneer, when asked why he had procured P to sign the document, was that he had done so in order that P should be bound by the contract. Despite the fact that V had not signed the document (in the sense of affixing his name or mark thereto), since by his agent he had procured P to sign the document in order to bind him by the contract, had not V by his same agent recognised his name which had been inserted in the document as the affixing of his mark to the document? Two authorities were relied upon as suggesting, or even necessitating, an affirmative answer to this question.

In *Schneider* v. *Norris* (1814), 2 M. & S. 286, it had been held that if the name of a party had by his authority been printed in a written contract or memorandum of a contract (the two things being the same for this purpose), and that party subsequently recognised the printed name, the recognition of his name was equivalent to a signing of the document by the party to be charged for the purposes of the statute, "just as much as if he had subscribed his mark to it, which is strictly the meaning of signing" (*per* Lord Ellenborough, C.J., at p. 288). It is in these last words that we get a clue to the *ratio decidendi* of the present decision, which would otherwise appear so surprising to the reader of the present day, imbued as he is with the notion that the process of signature involves the writing of a name on a paper in a cursive hand.

The other decision relied upon under this head was *Evans* v. *Hoare* [1892] 1 Q.B. 593, in which *Schneider* v. *Norris* was taken a step farther. In *Evans* v. *Hoare* a form of contract which required a memorandum in writing under the Statute of Frauds before an action could be brought on it, whereby A entered into a certain agreement with B, was prepared by B's agent X. X procured the signature of A to the document, which clearly contained all the necessary particulars to satisfy the statute except that it had not been signed (in the modern sense of that word) by B, and the question was whether A could rely on this document in an action to enforce the contract against B. B argued that the principle of *Schneider* v. *Norris* only applied where the document was "sent out" by the person charged, but it was held that, if the latter had authorised an agent to lay before the party suing a document containing his name in full as that of the party with whom the contract was made, so as to announce to the other party that he was offering him certain terms if that other party would accept them in writing, and that other party thereupon signed the document, there was a sufficient memorandum of the contract for the purposes of the statute. It is not entirely clear from the decision (which was the decision of two judges sitting as a divisional court) whether

the "signature" which the court was able to find had been appended, on the *Schneider* v. *Norris* principle, to the document was that of the defendant himself (as Cave, J., appears to have thought) or that of his lawfully authorised agent (the view to which Denman, J., seems to have inclined); but this circumstance does not affect either the authority or the effect of the decision, which Roxburgh, J., applied in the present case. In the learned judge's judgment the auctioneer had authority to lay before P a document containing V's name in full as that of the party with whom the contract had been made, and P had thereupon signed, and he dismissed as an irrelevant distinction the fact that in *Evans* v. *Hoare* the document had been an informal document, whereas in this case the document was a formal contract of sale, on the ground that if such a distinction had any validity the document in the present case had been used by the auctioneer with great informality.

The second objection made by V was that the document in this case was one that itself by its own terms indicated that it should be signed by both parties, and that as it had been signed by one only the principle of *Schneider* v. *Norris* could not be invoked to supply the defect. Roxburgh, J., expressed the view that this was true if the document was regarded in isolation, but he found as a fact that it was equally certain that, when the auctioneer obtained P's signature thereto, neither P nor the auctioneer (regarded as the agent of the other party, V) ever intended any other signature to be added to the document; it had been their intention that the document should be the final written record of the contract between the parties. This finding was supported by evidence, but the question was whether such evidence was admissible.

The answer to this question was found in *Hubert* v. *Treherne* (1842), 3 Man. & Gr. 743, where a draft of a certain agreement between the plaintiff and the defendants was prepared on the orders of the defendants and approved by them, and a copy thereof sent to the plaintiff, but despite the presence of a *testatum* at the foot the draft was never signed by either of the parties, either by themselves or by an agent. In that case the court, for reasons not easy to extract from the report, was not satisfied that the dispatch of a fair copy of the document had been authorised by the defendants, or that the plaintiff saw it, and one of the essential conditions of the application of the *Schneider* v. *Norris* principle, as developed in *Evans* v. *Hoare*, was thus absent from the case. For this reason it was held that the document did not constitute a sufficient memorandum of the contract to enable the plaintiff to sue the defendants upon it. But in *Hubert* v. *Treherne* there was no evidence of the parties' intentions in regard to the document, apart from the language of the document itself, which clearly contemplated signature by both parties, while in the present case, although the language of the document *per se* also clearly contemplated signature by both parties, there was such evidence, and there were *dicta* in *Huvert* v. *Treherne* which indicated that such evidence was admissible. Thus, Coltman, J., had said (at p. 754) that "it is not certain that the plaintiff saw the articles [of agreement]; and there was no sufficient evidence of any authority to give out the copy on behalf of [the defendants]," and this was a plain indication that he might have reached a different conclusion if the plaintiff had seen the agreement and there had been evidence of the authority on the part of the defendants to give out the copy.

On the strength of this and other passages from the judgments in this case Roxburgh, J., held it to be perfectly clear that it was open to the court to investigate the circumstances in which the document had come into being, and the result of this part of the decision is, therefore, that, even if it is plain on the face of the document itself that signature by both parties was contemplated, evidence is admissible to show, for the purposes with which this article is concerned, that in fact the parties, by themselves or their agents, as the case may be, did not intend that any particular signature should be added to it.

This is a decision which is both interesting and important. It is interesting because it brings together the results of earlier decisions on diverse aspects of the same problem in a manner which has no precedent even in this profusely litigated topic of the law; and it is important because auctioneers and other agents often fill in forms of contract "with great informality," as in this case, and it cannot be an infrequent occurrence for the agent to omit to sign the form after its completion in his capacity of the vendor's agent. If, in such circumstances, the purchaser is persuaded to append his signature to the form, *Leeman* v. *Stocks* should enable the purchaser to rely on the document in an action against the vendor. If the result seems surprising, it is firmly supported by the authorities on which it is based.

"A B C"

Landlord and Tenant Notebook

CONTROL: MORE ABOUT THE "WIDOW'S CHARTER"

WHEN writing on the decision in *Moodie* v. *Hosegood* in our issue of 4th August last I mentioned that I might say more about the new authority, of which only brief reports were then available, when further particulars came to light. The decision was one in which the House of Lords overruled *Thynne* v. *Salmon* [1948] 1 K.B. 482 (C.A.) and *Smith* v. *Mather* [1948] 2 K.B. 212 (C.A.) and held that the expression "the widow of a tenant" in the definition of "tenant" in s. 12 (1) (*g*) of the Increase of Rent, etc. (Restrictions), Act, 1920, applied to the widow of a contractual tenant as it did to the widow of a statutory tenant. I recalled that the two decisions referred to had been based largely on the view that as by the Administration of Estates Act, 1925, s. 9, the estate of an intestate devolves upon the President of the Probate Division of the High Court, and a contractual tenancy was, unlike a so-called statutory tenancy, part of a deceased's estate, to hold that the widow acquired an interest under the Rent, etc., Restrictions Acts would mean that there would be two tenancies subsisting at the same time, with two persons liable for rent. I also recalled that Bucknill, L.J., who dissented from his brethren in *Thynne* v. *Salmon*, did not consider this objection a fatal one and was prepared to face the concurrence of two tenancies with equanimity. And I suggested that it might well be that the House of Lords had taken the same line. But the full reports now available —[1951] 2 T.L.R. 349 and [1951] 2 All E.R. 582—show that this surmise was wrong, and that their lordships have taken rather a wider view of the problem and given it a solution which covers not only intestacy cases but cases in which the deceased contractual tenant may have disposed of the tenancy by will to someone other than his widow and other than a member of his family, etc., such as are included in the definition. And in so doing, they have incidentally settled a kindred problem, one put to the court by counsel

for the tenant in *Thynne* v. *Salmon*: "If the argument for the landlord here is right . . . a tenant might die leaving his property to his mistress though his wife was still living with him. Is it right that she should be excluded from her rights under para. (*g*) merely on that account?" which Tucker, L.J., as he then was, ignoring the *petitio principii*, dealt with by saying that it was a hard case but a matter to be remedied by Parliament. In *Moodie* v. *Hosegood*, however, Lord Tucker agreed, on further consideration, that the solution suggested by Lord Morton of Henryton was the real answer.

The facts of *Moodie* v. *Hosegood* were quite straightforward: the appellant's husband, a contractual tenant of a controlled dwelling, died on 20th May, 1950; he left no will, and the respondent, after buying the freehold on 22nd June, served notice to quit on the probate judge, on the strength of which he sued for possession; succeeding, of course, as far as the Court of Appeal. But, in the House of Lords, Lord Morton and his colleagues were unanimous in holding that "tenant" in the interpretation clause cited included a contractual tenant so that the appellant was entitled to remain in possession.

Now there are, I suggest, two ways in which this result could be achieved. One would be to hold that the Rent Acts have modified not only the law of landlord and tenant but the law relating to devolution of property on death as well. Conceivably, it could have been decided that the effect of para. (*g*) was that a tenancy of controlled property just did not form any part of the estate of a deceased tenant who left a widow or a member of his family who had been residing with him, etc. This solution would, undoubtedly, somewhat surreptitiously do violence to established principles; but as against that it is consistent with the object of the Acts, i.e., "to protect people in their homes" and, by disposing of the "concurrent tenancies" difficulty, may be said to have the merit of simplicity.

The House of Lords, however, preferred to solve the problem by an approach which will certainly commend itself to Chancery practitioners. "If a contractual tenancy is still subsisting at her husband's death and devolves on someone other than the widow, it is not destroyed, but the rights and obligations which would ordinarily devolve on the successor in title of the contractual tenant are *suspended* so long as the widow retains possession of the house." There are, therefore, not two tenants at the same time, each entitled and bound. The widow becomes a so-called statutory tenant; in the hypothetical case she can, as it were, on production of marriage lines and ring, claim priority over the mistress; but the contractual tenancy subsists. And, if violence is done to the law of contract rather than to the law of succession, well, that is in keeping with the objects and *modus operandi* of the Rent Acts.

It is, of course, of some importance to observe that what has thus been laid down applies to cases of testacy as well as to cases of intestacy, of which that before the court was one: the effect of the decision was that the tenancy had duly vested in the probate judge, but had been determined by the notice to quit. The same result could be achieved in the case of a tenancy disposed of by will, no protection being conferred on the devisee; and it is made clear that if the tenancy should not be a periodic one, it will remain in being. Thus, the position of a landlord in such a case might be regarded as analogous to those of grantors of the old springing and shifting uses, originally equitable interests but legalised, as it were, by the Statute of Uses in 1535. The tenant's devisee, at all events, has a future interest, which will materialise on the death of the widow or member of the tenant's family (springing use) or on the widow, etc., giving up possession (shifting use). Hard things have been said about the draftsmen of the Rent Acts; but it may be that since the decision in *Moodie* v. *Hosegood*, he who was responsible for para. (*g*) of s. 12 (1) of the Act of 1920 will be regarded, in Lincoln's Inn at all events, as one who, in Emerson's words, "builded better than he knew." The quotation, incidentally, is from a poem intituled "The Problem."

R. B.

HERE AND THERE

NOTHING CRIMINAL

THERE is something curiously soothing about the name of Alabama, like the rhythm of an old lullaby, and under the charm of that impression the State's motto, "Here we rest," may well confirm an expectation of lotus-eating leisure which it would be well for the visitor to modify by a closer study of the letter and the spirit of local legislation. That, at any rate, would seem to be the moral of the recent case of the young lady who, having just arrived in Birmingham (which, of course, you know is in Alabama), was confronted by a police officer at the door of her hotel room and in answer to his question, "What are you doing?" innocently replied, "Why . . . nothing." Most of us in a similar situation in a strange place would have felt that an answer something to the same effect must be both safe and unexceptionable. Even the most captious parents only send to find out what baby is doing and tell him not to do it and if, by good fortune, he is doing nothing they heave a sigh of incredulous relief. So, we would feel, in the face of an absolute vacuum in the citizen's activities there would be a strong presumption of his innocence. But in Birmingham (Alabama) we would be wrong, for the law there abhors such a vacuum and the proper answer for a stranger within its gates, when faced with that particular question, is to say that he wishes to consult his lawyer, for the young lady's "nothing" brought her arrest on a charge of "idleness" under the vagrancy laws and eventually, on a technical conviction, a fine of about the equivalent of £9. Now, once you get the idea it is easy enough to side-step an admission of under-employment. The newly called barrister learns to do it from his very first day in chambers and often continues to perfect the art at his leisure in the fullest sense over a long period of years. In the offices of Whitehall and its far-flung dependencies they are even better provided, commanding as they do the protective colouring of all the verbal pomps of their own special vocabulary. The stage has its own simple exorcism of the demon of idleness—resting. That will always do for a start. "Lotus-eating" might perhaps be too literary for the literal mind of the average policeman. If one wants to give an impression of more positive activity, "collecting my thoughts" may meet the case with an implication that their diversity and value renders it a task of no little difficulty and high priority. To be "co-ordinating an overall plan for future global contingencies" should, in authoritative circles, be generally accepted as a sufficient mental alibi in the face of apparent bodily inactivity, though Sir Ernest Gowers would probably translate it quite simply into the English of Alabama's motto, "Here we rest."

R. *v.* TOYLAND

WE all know (or think we know) that British justice is the best in the world. At any rate it is best for the British. We all have a patriotic reverence for the courts and the judges who man them and we will defend them against the

three corners of the world in arms or any lesser breeds without our law. Nor is our admiration for them otherwise than increased when, with sympathetic solicitude, we see them torn from the task of expounding the common law, which resides so cosily and conveniently in their breasts, in order to undertake the far less congenial task of interpreting the statute law, so much of which appears to reside in Cloud Cuckoo Land, and to be expressed in a jargon appropriate to its domicile of origin. When this occurs it produces in the beholder a species of schizophrenia. Our reverence for the law in its judicial form and embodiment remains and is even enhanced. Our feeling for its content is such as that content deserves. If when she looks at herself in the distorting mirror of the statute book Britannia sometimes gets a terrible shock, that is no fault of the Bench of judges, who must hold it up to her as it is. And the more firmly and clearly they expound the preposterous implications of this or that Act of Parliament the better the chance that something will be done about it. The most recently discovered curiosity in our statutory fun-fare is that Toyland comes within the ambit of the Town and Country Planning Act. So it has just been ruled in the King's Bench Division and, I suppose, on the terms of the Act it could hardly have been ruled otherwise. The subject-matter is Beconscot. Everyone has heard of that enchantingly complete microcosm of the English countryside built to a scale of an inch to a foot in a garden at Beaconsfield, with its High Street, its minster, its railway system, its docks, its airport, its zoo. Over a period of years it has earned about £30,000 for charity and delighted a million visitors. And now the Buckinghamshire County Council wants to demolish it. One can take it for granted that there are the soundest of administrative reasons (there always are), though in this particular case they do not actually leap to the eye. One does not wish to labour the point. The spectacle of the whole majestic power of the almighty State being set in motion to wage a war of extermination on Lilliput speaks with an eloquence all its own. *Res ipsa loquitur.* The troops and the tanks and the police force, the men from the Ministries and their brethren from the County Hall—all converging on a group of dolls' houses to bring them in line with the Welfare State. Did not their construction amount to "building, engineering and other operations" within the meaning of the Act? Very well then, what's the complaint?

TAILPIECE

IN the court of Harman, J., recently, a testator was described as having been a barrister and a tailor. The judge asked how he had combined the two callings. Counsel: "It is suggested to me that during the week-end he made suits and during the week he appeared in them."

RICHARD ROE.

COMPULSORY REGISTRATION PROPOSAL: PUBLIC INQUIRY

A public inquiry has been held at the County Hall, Kingston-on-Thames, to consider whether registration of title to land on sale should be made compulsory in Surrey. Mr. J. Neville Gray, D.S.O., K.C., conducted the inquiry on behalf of the Lord Chancellor and after hearing evidence for three and a half days he announced that the proceedings would be adjourned, so that he might hear the speeches of counsel on the legal issues involved, until 17th October, 1951, in London.

Mr. G. H. Newsom (instructed by the Treasury Solicitor) appeared for H.M. Land Registry; Mr. Geoffrey Cross, K.C., and Mr. Frank G. King (instructed by Mr. F. E. Baldock, Guildford) appeared on behalf of the West Surrey and South East Surrey Law Societies and Mr. R. E. Megarry (instructed by Mr. W. E. Farquharson, Surbiton) appeared on behalf of the Mid-Surrey Law Society.

Evidence was given by the Chief Land Registrar (Mr. G. H. Curtis); Mr. John J. Wontner (author of "A Guide to Land Registry Practice"); Mr. E. L. V. Waddilove (Guildford) and Mr. R. J. F. Burrows (a member of the Council of The Law Society) on behalf of the West and South-East Surrey Law Societies; Mr. A. R. Cotton (Sutton) and Mr. A. F. Stapleton Cotton (Epsom) on behalf of the Mid-Surrey Law Society and Mr. T. V. S. Durrant, County Planning Officer.

In the course of his evidence Mr. Curtis stated that Surrey was chosen for extension of compulsory registration as it adjoined the existing compulsory areas of Middlesex, London and the County Borough of Croydon, and 10·5 per cent. of its acreage had already been registered voluntarily. He stated that so far as maps and staff were concerned the Registry was ready for the proposed extension to Surrey.

Delays in the Land Registry, due to shortage of staff, in registering transfers of property, had, by the spring of 1950, been reduced from six or seven months to just over three weeks.

He estimated that 8,000 first registrations would be effected during the first year of compulsory registration, producing £40,000 in fees to the Registry as against expenses of £30,000.

A registered title, he stated, was guaranteed by the State and prevented fraud. Registered conveyancing was more expeditious and the costs were much lower.

On behalf of the local law societies it was stated that there was no evidence of appreciable public demand for the proposed extension, which would cause hardship to purchasers of unregistered properties without conferring any corresponding benefit; that both the law governing registration of title and the discharge of the administrative and executive functions of the Land Registry were defective, and that the existing facilities for voluntary registration were adequate.

In the course of his evidence, Mr. A. F. Stapleton Cotton stated that his society was in favour of registration of title in principle, but the system was more suited to fully developed urban areas. He gave instances of defects in the system and difficulties encountered by practitioners, as did other witnesses. He wished to see those difficulties removed before the system was made compulsory in Surrey.

Purchasers of unregistered properties moreover would have to bear the expense of Land Registry fees and extra costs of registration over and above the costs and stamp duty normally incurred. Many people were forced to buy properties because there were no houses to let. To do so, in many cases, purchasers had to borrow on mortgage up to the hilt. In these times of financial stringency such people should not be put to the extra expense involved. There were already adequate facilities for voluntary registration if a landowner desired it.

Investigations he had made showed that the average purchaser of a house for occupation continued to reside in the property for from fifteen to twenty years. A purchaser would not get any benefit from reduced costs until the property was sold. There were no up-to-date ordnance maps of the county on sale to the public although they were available to the Land Registry.

He suggested that a committee should be constituted on which The Law Society, the Land Registry and, if desired, the Lord Chancellor's Department should be represented—a "consumers' council"—to consider the very real difficulties experienced by solicitors in relation to the system of registration of title.

The Chief Land Registrar intimated that he was in agreement with this suggestion, and also said that he was prepared to recommend that a reduction be made in the Land Registry fees payable on first registration in compulsory areas.

The Lord Chancellor has appointed Mr. ERSKINE SIMES, K.C., to be a member of the Lands Tribunal in the place of the late Mr. F. Webster.

Mr. G. O. BREWIS, deputy Clerk of Nottingham County Council since 1947, has been appointed Clerk of Bedfordshire County Council.

The Foreign Secretary has appointed Mr. M. E. BATHURST, C.B.E., to be Legal Adviser to the United Kingdom High Commissioner for Germany, in succession to Sir Alfred Brown, who is retiring.

Mr. F. B. STEVENS, solicitor, of Peterborough, has been appointed Under-Sheriff of Bedfordshire.

NOTES OF CASES

COURT OF APPEAL

ADVERTISING CONTRACT: DURATION

General Publicity Services, Ltd. *v.* Best's Brewery Co., Ltd.

Lord Oaksey, Jenkins and Morris, L.JJ. 11th October, 1951

Appeal from Jones, J. (*ante*, p. 238; [1951] 1 T.L.R. 521).

The defendants, the owners of a hotel, by their manager signed a contract with the plaintiffs whereby the defendants, in consideration of the plaintiffs supplying them with 5,000 tariff booklets free of charge because of advertisements contained in them, agreed to circulate or display the tariff booklets "to their best advantage in the course of our business over a period of three years." Some eighteen months later the defendants sold the hotel and so ceased to perform the contract. The plaintiffs alleged breach of contract and claimed damages for loss of revenue from advertising. Jones, J., held that it was not possible to imply into the contract a term that the defendants would continue to carry on their business for the three years referred to in the contract, but that the term which ought to be implied was that the contract would determine if the defendants ceased to carry on their business. He therefore dismissed the action. The defendants appealed.

LORD OAKSEY said that Jones, J., appeared to have decided the case on his construction of the words "in the course of our business" which he read as meaning "so long as our business continues" and as controlling the words "over a period of three years." That construction was not in his (Lord Oaksey's) view correct. The words "in the course of our business" only referred to the way in which the booklets were to be displayed and brought to the notice of visitors to the hotel. Looking at all the circumstances, the defendants knew that the plaintiffs were relying on the advertising revenue for their profit. On the construction contended for by the defendants they would be entitled by selling the hotel next day to prevent any such revenue from coming into existence. Such a contract would be quite useless to the plaintiffs; and he thought that, on the true construction of the contract, there was a continuing obligation to circulate and display the booklets for three years certain, with an option to the plaintiffs to maintain it for a further three years. The appeal therefore succeeded.

JENKINS and MORRIS, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Roy Wilson*, K.C., and *H. G. Garland* (*Robinson and Bradley*); *J. Perrett* (*Hunters*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

STAMP DUTY: COMMISSIONERS INSUFFICIENTLY INFORMED

R. *v.* Inland Revenue Commissioners; *ex parte* Evill

Lord Goddard, C.J., Hilbery and Pilcher, JJ.
4th October, 1951

Application for an order of mandamus.

By s. 5 of the Stamp Act, 1891: "All the facts and circumstances affecting the liability of any instrument to duty, or the amount of the duty with which any instrument is chargeable, are to be fully and truly set forth in the instrument." By s. 12 (2): "The Commissioners [of Inland Revenue] may require to be furnished with an abstract of the instrument and also with such evidence as they may deem necessary, in order to show to their satisfaction whether all the facts and circumstances affecting the liability of the instrument to duty, or the amount of the duty chargeable thereon, are fully and truly set forth therein." An author settled on the applicant trustees the copyright in certain of his works for the benefit of his children and other named persons, the royalties on sale of the works thus being receivable by the trustees on behalf of the beneficiaries. The settlement being a voluntary disposition *inter vivos*, by s. 74 of the Finance (1909–10) Act, 1910, stamp duty was chargeable on the value of the property transferred. The facts and circumstances affecting the liability to stamp duty or the amount of it were not fully set forth in the instrument, in that, while it set forth the copyrights being assigned, it gave no indication of their value. The trustees having presented the settlement to the respondent commissioners for assessment of the stamp duty payable, the commissioners asked for further information. The trustees accordingly now sought an order of mandamus to compel the commissioners to assess the stamp duty, contending that the commissioners must make the assessment in view of the fact that it was undisputed that property of some value was being transferred.

LORD GODDARD, C.J., said that, as the settlement gave no indication of the value of the property settled, and as the value of the copyrights was a matter of uncertainty, the commissioners were entitled to complain that the facts and circumstances relevant to the amount of stamp duty were not set out in the instrument. They were accordingly entitled to ask for the necessary information. It would, indeed, have been improper for them to assess the stamp duty in the absence of knowledge of the value of the property transferred. It was a frequent cause of complaint nowadays that tribunals acted without sufficient evidence.

HILBERY and PILCHER, JJ., agreed. Application refused.

APPEARANCES: *Cyril King*, K.C., and *G. G. Honeyman* (*Evill & Coleman*); *J. Pennycuick*, K.C., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

TOWN AND COUNTRY PLANNING: ENFORCEMENT ORDER

D'Alessio and Another *v.* Enfield Urban District Council

Lord Goddard, C.J., Hilbery and Devlin, JJ. 5th October, 1951

Case stated by Middlesex justices.

A scrap metal business had been carried on by the appellant on certain land for many years before 1945, when they began to manufacture small metal parts and fittings in a shed on the land. That new use of the premises was a "development" begun without permission under the Town and Country Planning Act, 1932. In June, 1948, the Minister of Health gave a determination under s. 2 (8) of the Building Restrictions (Wartime Contraventions) Act, 1946, that the use of the premises for the manufacture of the small metal parts and fittings was contrary to planning control, but should be deemed to comply with planning control, subject to certain conditions, "until 31st December, 1949, and no longer." The owners continued the activity in question after that date, whereupon the respondent urban district council, as the local planning authority, served on them an enforcement notice stated to be served under ss. 23 and 75 of the Act of 1947. The owners appealed to the justices against that notice under ss. 23 (4) and 75 (5) of the Act of 1947, contending that s. 75 was not applicable to the case and that an enforcement notice served under it was accordingly invalid. The justices, holding s. 75 to be applicable, dismissed the owners' appeal against the enforcement notice. The owners now appealed to the Divisional Court.

Section 23 of the Town and Country Planning Act, 1947, provides for the serving of an enforcement notice by the local planning authority where unlicensed development has been carried out on land. By s. 75 (1) the provisions of Pt. III of the Act concerning enforcement notices are to apply in respect of works on or use of land existing at the appointed day which were carried out or begun in contravention of previous planning control; but by s. 75 (2) where those works or that use were begun during the war period then, if by virtue of any determination by the Minister under the Building Restrictions (Wartime Contraventions) Act, 1946, the works or use are deemed to comply with planning control within the meaning of the Act of 1946, s. 75 is not to apply to the works or use. By s. 76 (1) of the Act of 1947, where any works on or use of land have been authorised by a permission granted subject to conditions under a planning scheme, Pt. III of the Act is to apply in relation to the works or use as if the conditions had been imposed on the grant of permission under Pt. III. By s. 76 (2) ". . . where . . . permission . . . was granted subject to conditions . . . restricting the period for which the works or use may be continued . . . then, if that period has not expired at the appointed day and the works are not removed, or the use discontinued, at the expiration of that period, the provisions of Pt. III . . . with respect to enforcement notices shall apply as if the works . . . or the use" had come into being "at the expiration of that period and without . . . permission." By s. 76 (5) "Where . . . before the appointed day, it has been determined under the" Building Restrictions Act, 1946, "that any works . . . or any use . . . shall be deemed to comply with planning control . . . subject to any conditions . . . this section shall

apply in relation to those works or that use, . . . as if the said conditions had been imposed on the grant of permission under a planning scheme . . . and notwithstanding any breach of those conditions," s. 75 "shall not apply thereto."

LORD GODDARD, C.J., said that the Minister had determined that, subject to compliance with certain conditions, the use of the premises for the manufacture in question should be deemed to comply with planning control until 31st December, 1949. It followed from the deeming of the use in question to be in compliance with planning control that it was not so in fact. Section 75, therefore, did not apply and could not be made applicable. Accordingly it was s. 76 which applied. The enforcement notice was thus invalid because it purported to be served under s. 75. It must be quashed, and the proceedings must be begun *de novo*.

HILBERY and DEVLIN, JJ., agreed. Appeal allowed.

APPEARANCES: *D. P. Kerrigan* (*Stanley de Leon & Co.*); *F. A. Stockdale* (*T. D. Jones & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION

POST-NUPTIAL SETTLEMENT: VARIATION AT INSTANCE OF GUILTY HUSBAND

Jeffrey *v.* Jeffrey

Collingwood, J. 10th October, 1951

Husband's application for variation of a deed of separation as constituting a post-nuptial settlement.

The parties were married in 1916. In 1935 the wife presented a petition for judicial separation. That suit was compromised by a deed of separation entered into in 1936, whereby the husband covenanted to pay the wife £275 a year free of tax. The parties thereafter lived separate and apart, and the husband maintained his payments under the deed. In October, 1949, the wife presented a petition for divorce on the ground of adultery, and filed a notice of application for maintenance. A decree *nisi* was pronounced on 9th January, 1950. On 25th May, 1950, the husband applied for variation of the deed of separation by extinguishing his liability to pay under the relevant clause. On 16th June, 1950, the wife applied to the court to rescind the decree *nisi* and to substitute for it a decree of judicial separation. The husband cross-applied for the decree *nisi* to be made absolute. The cross-application was granted ([1951] P. 32; 94 SOL. J. 458) and the decree was made absolute on 7th July, 1950. The registrar reported that there had been a considerable reduction in the husband's means since 1936 and recommended that the deed should be varied by the husband's paying the wife £75 a year, less tax, the wife being left free to apply for an order for maintenance. The wife sought variation of that report by substituting £275 a year, free of tax, or, alternatively, £275 less tax, for the sum recommended by the registrar. (*Cur adv. vult.*).

COLLINGWOOD, J., said that the registrar, in the absence of direct authority, had expressed some doubt whether the principles laid down with regard to variation of settlement were applicable, but that in making his report he had considered the somewhat exceptional circumstances. It had been contended for the wife that it was contrary to the practice of the court to vary a settlement in favour of the guilty party. If the circumstances of the case warranted it, however, a settlement could be varied in favour of a guilty party (see *Bowles* v. *Bowles* [1937] P. 127, *Garforth-Bles* v. *Garforth-Bles* [1951] P. 218; *ante* p. 140, and *Johnson* v. *Johnson* [1950] P. 22; 93 SOL. J. 551). The principles governing the exercise of the court's jurisdiction had been considered in *Constantinidi* v. *Constantinidi* [1905] P. 253, *Prinsep* v. *Prinsep* (1929), 45 T.L.R. 376, and *Tomkins* v. *Tomkins* [1948] P. 170; 92 SOL. J. 111. The considerations applicable included the conduct and pecuniary position of the parties, the available means which would be left to the respondent, and the relative sums contributed by each party. The main object of variation was to make a proper provision for the injured spouse; but the court must also be fair to the wrongdoing party, and the jurisdiction was in no sense a penal one. To apply those principles, the husband's adultery was not of a flagrant character and was not the cause of the estrangement between the parties, and the wife's attempt to get the decree *nisi* rescinded had not been actuated by motives which had commended themselves to Pearce, J. True, the wife was not earning, but also she had contributed nothing towards the settlement, and there was therefore no question of her fortune being used for the husband's benefit. His financial position had considerably deteriorated, and he could only maintain the payments under the deed out of capital to the ultimate impoverishment of himself and to the consequent detriment of the wife. For those reasons he (his lordship) had come to the conclusion that the registrar's report should be confirmed. Report confirmed.

APPEARANCES: *J. B. Gardner* (*C. O. Herd* with him); *Alfred Cox & Son* (for *Clarke & Nash*, High Wycombe); *J. A. Petrie* (*Gregory, Rowcliffe & Co.*, for *Neal, Scorah, Siddons & Co.*, Sheffield).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Agriculture (Control of Notices to Quit) (Service Men) Regulations, 1951. (S.I. 1951 No. 1786.)

Cambridge Waterworks Order, 1951. (S.I. 1951 No. 1741.)

Carriage by Air (Jersey) Order, 1951. (S.I. 1951 No. 1774.)

Chartered and Other Bodies (Temporary Provisions) (End of Emergency) Order, 1951. (S.I. 1951 No. 1777.)

This order declares 3rd October, 1951, to be the date on which the emergency that was the occasion of the passing of the Chartered and Other Bodies (Temporary Provisions) Act, 1939, came to an end. Accordingly the Act, by s. 8 (3), ceased to be in force as from that date.

Coal Industry (Workmen's Compensation Liabilities) (Northumberland) Order, 1951. (S.I. 1951 No. 1796.)

Colonial Air Navigation (Amendment) Order, 1951. (S.I. 1951 No. 1776.)

County Council of the County of Sutherland (Lochan Dubh) Water Order, 1951. (S.I. 1951 No. 1761 (S. 88).)

County of Gloucester (Electoral Divisions) Order, 1951. (S.I. 1951 No. 1756.)

Double Taxation Relief (Taxes on Income) (Norway) Order, 1951. (S.I. 1951 No. 1798.)

Egg Products (Amendment) Order, 1951. (S.I. 1951 No. 1781.)

Electric Lighting (Restriction) General Licence, 1951. (S.I. 1951 No. 1762.)

Fire Services (Conditions of Service) (Scotland) Amendment No. 3 Regulations, 1951. (S.I. 1951 No. 1766 (S. 91).)

Fire Services (Ranks and Conditions of Service) (No. 4) Regulations, 1951. (S.I. 1951 No. 1767.)

Flour Confectionery (Amendment) Order, 1951. (S.I. 1951 No. 1755.)

Fur Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 1768.)

Fur Wages Council (Great Britain) Wages Regulation (Holidays) (No. 2) Order, 1951. (S.I. 1951 No. 1788.)

Furniture (Maximum Prices) Order, 1951. (S.I. 1951 No. 1744.)

General Apparel (Distributors' Maximum Prices) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1810.)

Grass and Forage Crop Drying (Loans) (Scotland) Scheme, 1951. (S.I. 1951 No. 1770 (S. 92).)

Greenwich Hospital (Grant to the Diocese of Newcastle) Order, 1951. (S.I. 1951 No. 1772.)

Halifax Corporation Water Order, 1951. (S.I. 1951 No. 1783.)

Hill Farming Improvements (Settled Land and Trusts for Sale) Regulations, 1951. (S.I. 1951 No. 1816.)

Hill Sheep (Scotland) No. 2 (Extension) Scheme, 1951. (S.I. 1951 No. 1764 (S. 89).)

Hydrogen Cyanide (Fumigation of Buildings) Regulations, 1951. (S.I. 1951 No. 1759.)

Hydrogen Cyanide (Fumigation of Ships) Regulations, 1951. (S.I. 1951 No. 1760.)

Import Duties (Exemptions) (No. 13) Order, 1951. (S.I. 1951 No. 1778.)

Import Duties (Exemptions) (No. 14) Order, 1951. (S.I. 1951 No. 1779.)

Keg and Drum Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 1769.)

London Traffic (Prescribed Routes) (No. 27) Regulations, 1951. (S.I. 1951 No. 1752.)

Merchant Shipping (Safety Convention) (Haiti) Order, 1951. (S.I. 1951 No. 1773.)

National Health Service (General Medical and Pharmaceutical Services) (Scotland) (Amendment No. 2) Regulations, 1951. (S.I. 1951 No. 1765 (S. 90).)

National Health Service (Qualifications for Supplementary Ophthalmic Services) (Scotland) Amendment Regulations, 1951. (S.I. 1951 No. 1763 (S. 87).)

National Insurance and Industrial Injuries (Reciprocal Multilateral Agreement) (Belgium) Order, 1951. (S.I. 1951 No. 1801.)

Non-Ferrous Metals Prices (No. 8) Order, 1951. (S.I. 1951 No. 1793.)

Northern Ireland (Sea Fish Industry) Order, 1951. (S.I. 1951 No. 1797.)

Reserve and Auxiliary Forces (Protection of Civil Interests) (Agricultural Tenants' Representation) Regulations, 1951. (S.I. 1951 No. 1787.)

Reserve and Auxiliary Forces (Training) (Isle of Man) Order, 1951. (S.I. 1951 No. 1799.)

Retention of Cables Under Highways (Nottinghamshire) (No. 3) Order, 1951. (S.I. 1951 No. 1802.)

Stopping up of Highways (London) (No. 20) Order, 1951. (S.I. 1951 No. 1803.)

Stopping up of Highways (Middlesex) (No. 8) Order, 1951. (S.I. 1951 No. 1804.)

Stopping up of Highways (Northumberland) (No. 3) Order, 1951. (S.I. 1951 No. 1805.)

Tarbet-Inverary-Lochgilphead-Oban Trunk Road (Kilninver and Other Diversions) Order, 1951. (S.I. 1951 No. 1806.)

Trade Boards and Road Haulage Wages (Emergency Provisions) (End of Emergency) Order, 1951. (S.I. 1951 No. 1800.)

Utility Apparel (Maximum Prices and Charges) (Amendment No. 7) Order, 1951. (S.I. 1951 No. 1771.)

Utility Apparel (Men's, Youths' and Boys' Outerwear) (Manufacture and Supply) (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1784.)

Utility Corsets (Manufacture and Supply) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 1780.)

Utility Curtain Cloth (Amendment) Order, 1951. (S.I. 1951 No. 1789.)

Utility Furniture (Marking and Supply) (No. 2) (Amendment No. 3) Order, 1951. (S.I. 1951 No. 1750.)

Utility Handkerchiefs (Marking and Manufacturers' Prices) (Amendment) Order, 1951. (S.I. 1951 No. 1790.)

Utility Upholstery Cloth (Amendment) Order, 1951. (S.I. 1951 No. 1791.)

Utility Woven Blankets (Marking and Manufacturers' Prices) Order, 1951. (S.I. 1951 No. 1785.)

Utility Woven Cloth (Cotton, Cotton Mixture and Linen) (No. 2) Order, 1951. (S.I. 1951 No. 1792.)

West African Territories (Air Transport) (Amendment) Order in Council, 1951. (S.I. 1951 No. 1775.)

Wild Birds Protection (Oxford) (No. 2) Order, 1951. (S.I. 1951 No. 1782.)

SOCIETIES

The LINCOLNSHIRE INCORPORATED LAW SOCIETY held their annual meeting in the Guildhall, Lincoln, on Tuesday, 2nd October. Mr. E. J. R. Hett, of Messrs. Hett, Davey & Stubbs, of Scunthorpe, was elected President for the year, and Mr. W. Epton, Vice-President. The retiring President was Mr. H. T. Ringrose, of Bourne.

The LAW STUDENTS' DEBATING SOCIETY announces the following debates for November, 1951: 6th November, A debate on the law depending on *Luxor (Eastbourne), Ltd.* v. *Cooper* [1941] A.C. 108; 13th November, "That this House considers that women should receive equal pay for equal work"; 20th November, "That the requirement by English law of the use of a seal on private documents should be abolished" (this will be a joint debate in conjunction with the Solicitors' Articled Clerks' Society); 27th November, "That German rearmament contains the seeds of another war."

The UNITED LAW SOCIETY announces the following debates for November, 1951: Monday, 5th November, "That voting at Parliamentary elections should be compulsory"; Monday, 12th November, Moot Point: John Smith was in the habit of christening his lady friends—and they were many—Babs. At a certain address lived two sisters Mary and Margaret, aged 21 and 23 respectively, towards each of whom John's conduct had been such that an offer of marriage would not have come as a complete surprise. One day, John wrote a letter to Mary, beginning "My —— Babs" couched in terms of complete surrender and containing an offer of marriage. The envelope was addressed to "Miss Jones." The letter was opened by Margaret who, thinking it was intended for her, wrote and accepted John. John at once pointed out the mistake, but the lady, being of a mercenary turn of mind, brings an action for breach of promise. Should the plaintiff succeed? (The procedure will follow that of an ordinary debate and it is hoped that members will attend ready to contribute to the argument); Monday, 19th November, "That the Labour/Conservative Party (whichever wins the election) is unfit to govern." For the Labour Party: Miss V. J. Brown. For the Conservative Party: E. A. A. Shadrack; Monday, 26th November, "That this House advocates the establishment of a Public Defender."

An ordinary meeting of the MEDICO LEGAL SOCIETY will be held at Manson House, 26, Portland Place, W.1 (Tel., Langham 2127), on Monday, 29th October, 1951, at 8.15 p.m., when the President will deliver his presidential address, entitled, "Some Aspects of the Law of Defamation."

THE LAW ASSOCIATION

AN EXTENSION OF THE WORK

At the October meeting of directors of the Law Association, which was held on 1st October, 1951, an extension of the work was agreed upon, when the secretary was instructed to make arrangements for monthly food parcels to be sent to certain selected cases. Especial emphasis was laid on the necessity for taking all possible steps to ensure the maximum usefulness of the parcels, and to this end letters have already been sent to the beneficiaries making inquiries regarding particular likes and dislikes and dietetic requirements.

Other business included the review of several non-members' cases, consideration of a new case, the secretary's report on some of her vists which had revealed new needs, preparations for the launching of the annual appeal in December, and the admission of new members. The latter were: Mr. W. S. White (life member), Mr. A. G. Trower, Mr. E. F. W. Besly, Mr. M. T. Pelloe, Mr. R. M. Ritchie and Mr. W. H. Clark. Still more new members are urgently needed from among London practising solicitors; application forms, with forms of seven-year covenant, may be obtained from the Secretary, 25 Queensmere Road, Wimbledon Park, S.W.19, who will be pleased to answer any inquiries.

BOOKS RECEIVED

Relics of an Un-Common Attorney. By REGINALD L. HINE, F.S.A., F.R.Hist.S. Memoir by RICHENDA SCOTT, Ph.D. (Econ.). 1951. pp. xxv and (with Index) 253. London: J. M. Dent & Sons, Ltd. 18s. net.

Spicer and Pegler's Practical Auditing. Tenth Edition. By WALTER W. BIGG, F.C.A., F.S.A.A. 1951. pp. xxvii and (with Index) 659. London: H. F. L. (Publishers), Ltd. 27s. 6d. net.

Hill's Complete Law of Housing. Second Supplement to the Fourth Edition. By D. P. KERRIGAN, B.L. (Edin.), of the Middle Temple, Barrister-at-Law, and R. G. C. DAVISON, LL.B., of Gray's Inn, Barrister-at-Law. 1951. pp. xxiv and 264. London: Butterworth & Co., Ltd., and Shaw & Sons, Ltd. 30s. net.

The Technique of Advocacy. By JOHN H. MUNKMAN, LL.B., of the Middle Temple and North-Eastern Circuit, Barrister-at-Law. 1951. pp. xiv and 173. London: Stevens & Sons, Ltd. 17s. 6d. net.

The Evolution of Law and Order. By A. S. DIAMOND, M.A., LL.D., Barrister-at-Law. 1951. pp. vii and (with Index) 342. London: C. A. Watts & Co., Ltd. 21s. net.

REVIEWS

A Magistrate's Handbook. Second Edition. By His Honour Sir RONALD BOSANQUET, K.C., formerly Chairman of Monmouthshire Quarter Sessions, and A. J. F. WROTTESLEY, M.A., of the Inner Temple, Barrister-at-Law. With a foreword by the Rt. Hon. LORD ROCHE. 1951. London: The Thames Bank Publishing Co., Ltd. 12s. 6d. net.

The purpose of this book sufficiently appears from its title and in 236 pages of text the authors set out a résumé of the duties of magistrates and court procedure. Before expressing our opinion on the work in general, we must, with regret, say that there are a number of errors of law in it. Some of them are of a minor nature and unlikely to affect the lay magistrates for whom the book is intended, e.g., the omission from the Appendix relating to limitation of time of references to the Aliens Order, 1920, s. 18 (10), the Sale of Food (Weight and Measures) Act, 1926, s. 12 (6), and the Road Traffic Acts, 1930, ss. 7 (5) and 35 (3), and 1934, s. 33 (1). More serious, however, is the statement which appears on pp. 61 and 65 that magistrates, in considering whether to commit a case for trial or deal with it summarily, may have regard to the character and antecedents of the accused; since the Criminal Justice Act, 1948, they have been forbidden to refer to such matters for those purposes at all. On p. 73 it is stated that where a case has been adjourned and the members of the bench are not the same as at the previous hearing, the evidence of witnesses already called may be read over to them and they should be asked if it is correct; this requires a great deal of qualification in view of cases like *Fulker* v. *Fulker* (1936), 81 SOL. J. 36. The power to remand a person accused of an indictable offence, where he and the prosecutor consent, for more than eight days and the power to commit an accused person for trial at the next quarter sessions but one, may be exercised only where the accused is on bail, but this does not appear in the text. Again, the provision that outside London a juvenile court may not be wholly composed of lady magistrates is not mentioned in the chapter on such courts, and at p. 59 there is the remarkable statement that "The bench may allow other officials and solicitors' managing clerks to act [as advocates]."

Minor criticisms we would make are that the subject of recognizances to keep the peace receives only fourteen lines of treatment and that the circumstances which should guide magistrates in deciding whether or not to place an offender on probation are not discussed at any length. The selection of offences in the chapter on Miscellaneous Criminal Matters does not take account of many matters which are dealt with by the courts far more frequently than are some of those which the authors do discuss (incidentally, the fine for an offence as a rogue and vagabond is £25, not £5), and in the chapter on Juvenile Courts we would suggest adding that a local authority can be a "fit person."

Subject to these points, we can recommend the book and would say that the chapters on Licensing, Bastardy and Lunacy and Mental Deficiency and the general account of procedure are very good indeed. There are also an account of the work of quarter sessions and an excellent index.

All magistrates, especially new ones, will find this book valuable as a sketch of their duties in and out of court and of procedure, provided that they heed the warning given in the Preface to defer to the advice tendered by their clerk.

The Iron and Steel Act, 1949. With General Introduction and Annotations by W. GUMBEL, LL.B., of the Inner Temple and South-Eastern Circuit, Barrister-at-Law, and K. POTTER, M.A., of the Middle Temple, Barrister-at-Law. Consulting Editor: C. PEARSON, C.B.E., K.C. 1951. London: Butterworth & Co. (Publishers), Ltd. 25s. net.

This book makes available to a wider circle of readers a work which originally appeared as part of Butterworth's Annotated Legislation Service. The Introduction gives a brief history of the iron and steel industry during the last twenty years, and continues with a comprehensive summary of the Act. A new term of art, now appearing for the first time in a legal text-book, is "hiving-off." This means that assets and companies may be taken out of the scope of the Act during the transitional period by the Act or with the consent of the Minister. The book contains no Table of Cases, as there are few judicial decisions on the subject. All the relevant cases are cited in the notes to the sections, and in the sixth column of Appendix A. This consists of a comparative table, showing the sections of this Act and the corresponding sections of the Gas Act, 1948, the Electricity Act, 1947, the Transport Act, 1947, and the Coal Industry Nationalisation Act, 1946. The law of nationalisation is a new departure in legislation, and is codified in the above statutes.

Town and Regional Planning Law in Ireland. By J. MILEY and C. KING, of King's Inns, Barristers-at-Law. 1951. Dublin: Browne & Nolan, Ltd. 21s. net.

It may perhaps come as a surprise to some that planning law exists also in Ireland. Those who require to know something about it will find it well set out in this book. The system is akin to that of interim development control and planning schemes which has now been abandoned in England and Wales, though the preface to the book states that not a single planning scheme has been brought into force since the relevant Irish Act was passed in 1934.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Lessee's Option to Determine: An Indefensible Condition

Sir,—In some of the forms of leases given in the leading text-books of conveyancing precedents, when a lessee has an option to terminate the lease at a given date the right to exercise the option is made conditional upon the lessee

"up to the time of such termination paying the rent and performing the covenants hereinbefore reserved and contained."

It is my view, which I hold very strongly, that the words which I have quoted above are open to grave objection from the point of view of a lessee, while they give no protection to a lessor, and I believe that all solicitors, whether acting for lessor or lessee, should discontinue the use of them.

I have yet to hear any reasoned argument in favour of their retention.

From the point of view of a lessee it is essential that, having given the requisite notice, he should know for certain that his term will expire on the termination of the notice.

It is quite unjustifiable that he should be exposed to the possible risk that some weeks, or months, later the lessor may come along and claim to invalidate the notice on the ground of the existence of some trivial breach of covenant.

The risk may be small, but it is there.

From the lessor's point of view the words are unnecessary for his protection, and surely it is a complete absurdity that he should claim to force the lessee to remain solely on the ground that the lessee has already broken the covenants in the lease.

I venture to say that the words are indefensible from every point of view and ought to be deleted from every precedent in which they appear.

LESSEE'S SOLICITOR.

London, E.C.

Bentham Committee

Sir,—This Committee was compelled to cease its activities early in this year, when a few cases it had undertaken were still current and it was in debt to the bank.

Arrangements were made for the unfinished cases to be dealt with and the bank overdraft has been paid off thanks to the continued generosity of subscribers to the Committee's funds. It is these friends whom the Committee particularly wishes to thank and I hope you will allow me to do so by your courtesy in publishing this letter.

I also wish them to know that the treasurer's final account has been made up to 30th June (when the Committee's banking account balanced). Anyone interested who wishes to see this account should communicate with Mr. B. F. Mendel, 1 New Square, Lincoln's Inn, W.C.2.

The circumstances which brought to an end the work of the Bentham Committee are referred to in the report made to the Lord Chancellor by his Advisory Committee appointed under the Legal Aid and Advice Act. The Advisory Committee emphasised in their report the urgency of setting up the legal advice scheme and providing for legal aid in the county courts and courts of summary jurisdiction, which voluntary associations like the Bentham Committee had in some measure supplied. The members of the Bentham Committee want to support most strongly this recommendation of the Advisory Committee.

A. L. SAMUELL,
late Chairman of the Bentham Committee
for Poor Litigants.

London, E.C.4.

An Advertisement Answered

Sir,—Having recently inserted an advertisement in the B Register in the *Law Society's Gazette* (Partnerships, etc., Wanted), I have received a reply from a gentleman who states that he is seeking an admitted man for his firm, and he asks me to forward him photographs of myself and my wife (if any).

One seems to be reminded vaguely of a Gallic maxim—*cherchez la femme*—but in my case I am not married, so am still engaged *en cherchant la feme sole*. I am afraid I was rather tempted to send the gentleman in question a photo of Miss Rita Hayworth, or some other lady of outstanding talent.

Perhaps we shall, before long, see advertisements in the legal publications on some such lines as these :—

" Solicitor and Wife required ; Solicitor to act as Managing Clerk on Probate, Trust and Conveyancing, etc.; Wife as senior shorthand-typist and secretary to Principal. Staff day nursery provided. (Christian names not allowed during working hours.) State joint salary required."

Perish the day ! UNDERDOG.

London, N.W.

Attestation of Deeds, etc.

Sir,—Messrs. Ormond & Fullalove's letter reminds me of an occasion when I was serving with one of the Army Legal Aid Sections. I had compiled a lengthy statement on behalf of a serviceman and sent it to him by post. In my covering letter I said : " . . . If you are satisfied that the statement is correct in every detail please sign the same where your initials are indicated in pencil and return it to me." I forget the name of the person concerned, but the statement was returned to me in due course with the word " same " scribbled on the foot of the last page. K. V. GARNER.

Lincoln's Inn.

Sir,—It is not only clients who are sometimes careless about proper execution.

A firm I was with years ago used to ask the junior clerk to type small slips headed " Instructions for Signature " to attach to documents being sent by post.

One client returning a document properly witnessed and attested asked, " You did not mean me to put my ginger on the seal really, did you ? " F. JOYNSON.

London, S.E.23.

NOTES AND NEWS

EAST SUFFOLK COUNTY DEVELOPMENT PLAN, 1951

On 5th October, 1951, the above-named development plan was submitted to the Minister of Local Government and Planning for approval. It relates to land situate within the Administrative County of East Suffolk, and comprises land within the undermentioned county districts. A certified copy of the plan, as submitted for approval, has been deposited for public inspection at the County Hall, Ipswich, and at the Council's Office, The Marina, Lowestoft. Certified copies of extracts of the plan relating to the under-mentioned county districts have also been deposited for public inspection at the places mentioned below :—

County District	*Place of Deposit*
Aldeburgh Borough ..	Town Hall, Aldeburgh.
Beccles Borough	Municipal Offices, Blyburgate, Beccles.
Eye Borough	Town Clerk's Office, Eye.
Lowestoft Borough ..	Town Hall, Lowestoft.
Southwold Borough ..	Town Hall, Southwold.
Bungay Urban District ..	2 Earsham Street, Bungay.
Felixstowe Urban District ..	Town Hall, Felixstowe.
Halesworth Urban District ..	Town Hall, Halesworth.
Leiston Urban District ..	Council Offices, Leiston.
Saxmundham Urban District	Council Offices, Rendham Road, Saxmundham.
Stowmarket Urban District	Council Offices, Ipswich Road, Stowmarket.
Woodbridge Urban District	17 Thoroughfare, Woodbridge.
Blyth Rural District ..	Council Offices, Rendham Road, Saxmundham.
Deben Rural District ..	Council Offices, Melton Hill, Woodbridge.
Gipping Rural District ..	Council Offices, " Hurstlea," Needham Market.
Hartismere Rural District ..	Council Offices, Victoria Road, Eye.
Lothingland Rural District	Council Offices, Rectory Road, South Lowestoft.
Samford Rural District ..	25 London Road, Ipswich.
Wainford Rural District ..	1 Ballygate, Beccles.

The copies or extracts of the plan so deposited may be inspected at the places mentioned above from 9.30 a.m. to 4 p.m. on all weekdays other than Saturdays. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, 32 St. James's Square, London, S.W.1, before the 3rd December, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the East Suffolk County Council, and will then be entitled to receive notice of the eventual approval of the plan.

CANTERBURY DEVELOPMENT PLAN, 1951

The above development plan was on 5th October, 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land situate within the City and County Borough of Canterbury. A certified copy of the plan as submitted for approval may be inspected at the office of the Planning Officer and City Architect, 15 Dane John, Canterbury, from 9.30 a.m. to 1 p.m. and 2.30 p.m. to 4.30 p.m. (Saturdays 9.30 a.m. to 1 p.m.). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before 1st December, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Town Clerk, Canterbury, and will then be entitled to receive notice of the eventual approval of the plan.

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Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).